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2006-A

8 UNITED STATES BANKRUPTCY COURT

9 NORTHERN DISTRICT OF CALIFORNIA - OAKLAND DIVISION

10 In re

Case No. 09-45018-RLE

11 ANDREW JAMES WASSON AND
12 CHERYLE ANN WASSON,

Chapter 13

13 Debtor(s).

R.S. No. ELL-247

14 MOTION FOR RELIEF FROM
AUTOMATIC STAY
(11 U.S.C. § 362 and Bankruptcy Rule 4001)

15 DATE: October 12, 2011

16 TIME: 1:30 pm

17 CTRM: 201

18 1300 Clay Street
Oakland, CA 94604-1426

19 TO THE RESPONDENTS NAMED ABOVE:

20 HSBC BANK USA, NATIONAL ASSOCIATION, AS TRUSTEE FOR WMLT 2006-
21 A¹ ("Movant"), respectfully represents as follows:

22 **RELIEF FROM STAY - CAUSE**

23 **FAILURE TO MAKE POST-PETITION PAYMENTS**

24 1. This court has jurisdiction over the subject matter of this Motion pursuant to the
25 provisions of 28 United States Code §§ 157, 1334, and 11 United States Code § 362.

26 /././

27
28 ¹ This Motion for Relief from Automatic Stay shall not constitute a waiver of the within party's right to receive service pursuant to Fed. R. Civ. P. 4, made applicable to this proceeding by Fed. R. Bankr. P. 7004, notwithstanding Pite Duncan, LLP's participation in this proceeding. Moreover, the within party does not authorize Pite Duncan, LLP, either expressly or impliedly through Pite Duncan, LLP's participation in this proceeding, to act as its agent for purposes of service under Fed. R. Bankr. P. 7004.

1 2. On or about June 9, 2009, Andrew James Wasson and Cheryle Ann Wasson
2 ("Debtors") filed a voluntary petition under Chapter 13 of the Bankruptcy Code. Martha G.
3 Bronitsky is the appointed Chapter 13 Trustee.

4 3. On or about March 2, 2005, Debtors, for valuable consideration, made, executed
5 and delivered to Najarian Loans, Inc., a California Corporation ("Lender") a Note in the principal
6 sum of \$548,000.00 (the "Note"). Pursuant to the Note, Debtors are obligated to make monthly
7 principal and interest payments commencing May 1, 2005, and continuing until April 1, 2035,
8 when all outstanding amounts are due and payable. A copy of the Note is attached to the
9 Declaration in Support of Motion for Relief From Automatic Stay as exhibit A and incorporated
10 herein by reference.

11 4. On or about March 2, 2005, Debtors made, executed and delivered to Lender a
12 Deed of Trust (the "Deed of Trust") granting Lender a security interest in the certain real
13 property located at 4876 Crestone Needle Way, Antioch, California 94531 (hereinafter "Real
14 Property"), which is more fully described in the Deed of Trust. The Deed of Trust provides that
15 attorneys' fees and costs incurred as a result of the Debtors' bankruptcy case may be included in
16 the outstanding balance under the Note. The Deed of Trust was recorded on March 11, 2005, in
17 the Official Records of Contra Costa County, State of California. A copy of the Deed of Trust is
18 attached to the Declaration in Support of Motion for Relief From Automatic Stay as exhibit B
19 and incorporated herein by reference.

20 5. Subsequently, Lender's beneficial interest in the Deed of Trust was assigned and
21 transferred to Movant. A copy of the Corporation Assignment of Deed of Trust evidencing the
22 Assignment of the Deed of Trust to Movant is attached to the Declaration in Support of Motion
23 for Relief From Automatic Stay as exhibit C and incorporated herein by reference.

24 6. The obligations under the Note are in default for failure to make payments as of
25 July 1, 2010. As of August 22, 2011, the estimated payoff owing under the Note is the
26 approximate sum of \$594,069.44. Further, Movant has incurred additional post-petition
27 attorneys' fees and costs in bringing the instant Motion. This is an approximate amount for
28 purposes of this Motion only, and should not be relied upon as such to pay off the subject loan as

1 interest and additional advances may come due subsequent to the filing of the Motion. An exact
2 payoff amount can be obtained by contacting Movant's counsel.

3 7. Pursuant to 11 United States Code § 1322, and the Debtors' Chapter 13 Plan, the
4 Debtors are obligated to make all post-petition payments owing on the Note directly to Movant.
5 However, Movant has not received the post-petition payments owing for July 1, 2010 through
6 August 1, 2011. Accordingly, the post-petition arrears owing under the Note are in the
7 approximate sum of \$35,147.28, consisting of fourteen (14) payments in the amount of
8 \$2,510.52, excluding the post-petition attorneys' fees and costs incurred in filing the instant
9 Motion. An additional payment will come due on September 1, 2011, and on the 1st day of each
10 month thereafter until the Loan is paid in full. A copy of the post-petition payment accounting
11 pursuant to Local Rule 4001-1(g)(1) is attached to the Declaration in Support of Motion for
12 Relief From Automatic Stay as exhibit D and incorporated herein by reference.

13 8. A debtor's failure to make post-petition mortgage payments as they become due in
14 a Chapter 13 case constitutes "cause" for relief from the automatic stay pursuant to 11 United
15 States Code § 362(d)(1). In re Ellis, 60 B.R. 432, 435 (B.A.P. 9th Cir. 1985). Accordingly, as
16 the Debtors have failed to make post-petition payments under the Note, Movant is entitled to
17 relief from the automatic stay pursuant to 11 United States Code § 362(d)(1).

RELIEF FROM STAY

LACK OF EQUITY

20 9. Movant is informed and believes that, based on the Debtors' bankruptcy
21 Schedules, the fair market value of the Real Property is no more than \$320,000.00. A copy of
22 Debtors' bankruptcy Schedules A and D are collectively attached to the Declaration in Support
23 of Motion for Relief From Automatic Stay as exhibit E.

24 10. Based on the above, under the best case scenario, Movant is informed and
25 believes that the equity in the Real Property is as follows:

26 | ./. /

27 | /././

28 | ./. /

1	Fair Market Value:	\$320,000.00
2	Less:	
	Movant's Trust Deed	\$594,069.44
3	National City's 2nd Deed of Trust	\$96,590.52
	Costs of Sale (8%)	<u>\$25,600.00</u>
4	Equity in the Property:	\$ (396,259.96)

5 As a result, there is no equity in the Real Property to be realized by the Debtors or the
6 bankruptcy estate. Further, as the Debtors are unable to service the debt on the Real Property,
7 Movant contends that the Real Property is not necessary for an effective reorganization.
8 Therefore, Movant is entitled to relief from stay under 11 United States Code § 362(d)(2).

9 11. If Movant is not allowed to regain possession of and to foreclose on the Real
10 Property it will suffer irreparable injury, loss and damage.

RELIEF FROM STAY - CAUSE

ADEQUATE PROTECTION

13 12. Pursuant to the provisions of 11 United States Code §§ 361 and 362(d), Movant is
14 entitled to adequate protection of its interest in the Real Property.

13. Movant submits the adequate protection in this case requires normal and periodic
cash payments, as called for by the Note, plus the repayment of any and all delinquent amounts
owed to Movant, including all attorneys' fees and costs incurred in the filing of this motion.

18 14. Movant is informed and believes that Debtors are presently unwilling or unable to
19 provide adequate protection to the Movant and there is no probability that adequate protection
20 can be afforded to Movant within a reasonable time.

21 15. By reason of the foregoing, Movant is entitled to relief from stay under 11 United
22 States Code § 362(d)(1), based upon the failure of Debtors to provide adequate protection to
23 Movant and to make payments as required by 11 United States Code § 1322.

24 WHEREFORE, Movant respectfully prays for an Order of this court as follows:

25 1) Terminating the automatic stay of 11 United States Code § 362, as it applies to the
26 enforcement by Movant of all of its rights in the Real Property under the Note and the Deed of
27 Trust:

2) That the 14-day stay described by Bankruptcy Rule 4001(a)(3) be waived;

1 3) Granting Movant leave to foreclose on the Real Property and to enforce the
2 security interest under the Note and the Deed of Trust, including any action necessary to obtain
3 possession of the Property;

4 4) The Order Terminating Stay of 11 U.S.C. § 362 shall be binding and effective and
5 supersede any subsequently entered confirmation order that confirms a Chapter 13 Plan of
6 Reorganization providing for the treatment of Movant's claim.

7 5) Permitting Movant to offer and provide Debtors with information re: a potential
8 Forbearance Agreement, Loan Modification, Refinance Agreement, or other Loan Workout/Loss
9 Mitigation Agreement, and to enter into such agreement with Debtors;

10 6) Alternatively, in the event this court declines to grant Movant the relief requested
11 above, Movant requests that an Order for adequate protection be issued, requiring the Debtors to
12 reinstate and maintain in a current condition all obligations due under the Note and Deed of Trust
13 and all other deeds of trust encumbering the Real Property, including Debtors' obligations to pay
14 when due (a) the monthly installments of principal and interest, as required under the Note;
15 (b) tax/insurance obligations; and (c) any sums advanced by Movant on behalf of Debtors in
16 order to protect Movant's interest in the Real Property, including all attorneys' fees and costs
17 incurred in the filing of this motion;

18 7) That the attorneys' fees and costs incurred by Movant for filing the instant Motion
19 be included in the outstanding balance of the Note as allowed under applicable non-bankruptcy
20 law; and

21 8) For such other and further relief as the court deems just and proper.

23 Dated: September 12, 2011

PITE DUNCAN, LLP

25 /s/ ERIN L. LANEY (CA SBN 259863)
26 ERIN L. LANEY (SBN 259863)
27 Attorneys for HSBC BANK USA,
 NATIONAL ASSOCIATION, AS
 TRUSTEE FOR WMLT 2006-A